

REMARKS

Upon careful and complete consideration of the Office Action dated November 25, 2008, applicant respectfully submits the following comments which are deemed to place the present application into condition for allowance. Favorable reconsideration of this application is respectfully solicited.

In the previously filed amendment, applicant amended the main claim to be directed to a “method for enhancing the sweetness of an edible product in the absence of an intense sweetener, comprising...” The present Office Action has rejected this amendment under 35 U.S.C. §112, first paragraph, on the opinion that applicant does not clearly teach said limitation.

Applicant respectfully disagrees with this conclusion and directs the Examiner’s attention to the same paragraph identified by the Office Action, i.e. page 10, last paragraph, wherein it is stated that:

In a preferred process according to the invention for sweetening edible products, polydextrose in a synergistically effective amount is included in the product, which contains a sweet tasting sugar compound. The edible product may also contain other sweetening agents but it should be noted that the inventive synergistic sweetening effect is obtained with polydextrose independently of the presence or absence of intense sweeteners in the product.

The present invention is directed to a method for enhancing the sweetness of an edible product without the need for an intense sweetener. The enhancing of the sweetness of the sugar compound is clearly based on the newly found synergistic ability of polydextrose and not the use of any intense sweetener. The prior art section of the present application discusses the use of

polydextrose and more specifically the fact that, prior to the present invention, the presence of polydextrose was not known to contribute to the sweetness of the edible product. That is, the prior art clearly indicated the non-sweetness of polydextrose and that where polydextrose was used to replace sugar, more intense sweeteners were required to be used to make up for it. Thus, it was very surprising that the Applicant has found that polydextrose has a synergistic sweetness enhancing effect on sweet tasting sugars and that the need for an intense sweetener was no longer needed where polydextrose was used.

Although the specification does not explicitly state that the method lacks the use of an intense sweetener, this is the entire purpose of the present invention. All the Examples of the present application are based on only polydextrose and a sugar and the invention is clearly drawn to a situation where there will be no need for an intense sweetener. In fact, if an intense sweetener was to be added, there would be no point in enhancing the sweetness of the sugar compound because one would easily provide the added sweetness by adding just a minute amount of the intense sweetener. Any contemplation of the existence of an intense sweetener in the method of the present invention would negate the need for the present invention altogether.

It is respectfully noted that intense sweeteners typically have a sweetness which is 100 to 1000 times as strong as natural sugars such as sucrose, fructose and the like. The sweetness enhancing afforded by the present invention would be expected to drown under the impact of an intense sweetener and this fact would be well understood by those skilled in the art. Thus, the above quoted passage found in the description should be understood to indicate that the chemistry involved in the sweetness enhancing of the present invention is not connected to any intense sweetener. It does not mean, and would not be interpreted as such, that an intense sweetener is needed in certain cases.

Thus it is respectfully submitted that the limitation “in the absence of an intense sweetener” as used in the main claim is clearly supported by the subject application. That is, it would be clear to the skilled artisan reading the subject specification that the only useful embodiment of the method of the present invention would be one where the presence of an intense sweetener is absent. It could not be expected from the prior art, especially the prior art cited by the Office Action, that polydextrose could be used to synergistically enhance the sweetness of a sugar compound such that the further use of an intense sweetener would not be required to compensate for the use of the polydextrose.

Based on the clear intent and purpose of the present invention, it is respectfully submitted that there is clear support for the previously amended main claim and the rejection of said claim based on 35 U.S.C. §112, first paragraph, be withdrawn.

The Office Action further maintained its previous rejection of claims 42-44, 46-54, 56 and 57 under 35 U.S.C. §102(b) as allegedly being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as allegedly being obvious over EP 0447359 (hereinafter referred to as “Wong et al.”), JP 7067536 and U.S. Patent No. 5,525,360 (hereinafter referred to as “Yatka et al.”). The Office Action cited Wong et al. for teaching a synergistic sweetening composition comprising polydextrose, monosaccharides, and/or disaccharides; JP 7067536 for teaching the combination of polydextrose and sugar; and Yatka et al. for teaching a composition comprising polydextrose and additional sugar compounds including sucrose and maltose. In making its rejections, the Office Action further alleged that “[s]ynergism would be inherent to that of Wong et al., JP 7067536 and Yatka et al. as the same components are used” and that “the concept of synergism in the sweetener art is well-known and expected.”

As was argued previously, Wong et al. teach a synergistic combination between the old type of improved polydextrose and a very specific artificial sweetener, i.e. 1-chloro-1'-deoxysucrose, which is a synthetic compound closely related to the well-known intense sweetener sucralose. Sucralose has an inherent sweetness, which is about 600 times as high as that of sucrose.

Wong et al. note on page 3, lines 35 to 36, that each intense sweetener is chemically distinct and that each sweetener presents a different challenge in respect to its use. There is no suggestion in Wong et al. that polydextrose has any effect on the sweetness of sucrose, nor on the sweetness of any other non-intense sweeteners. To the contrary, Wong et al. note on page 2, lines 42 to 43, that because polydextrose is not sweet, intense sweeteners must be used with polydextrose. The fact that polydextrose has been found to synergistically increase the sweetness of one specific halogenated derivative of sucrose with an intense sweetness of its own in no way teaches or makes it obvious or even likely that polydextrose has any such effect on the non-halogenated mono- and disaccharides of the present invention. Now that the method of the present invention as claimed clearly excludes any intense sweeteners from being added to the sweetening composition, the present invention is distinguished from that of the prior art.

Said in a slightly different manner, it should be realized that in accordance with the teachings of Wong et al., the person skilled in the art finds that the sweetness of one very specific compound, i.e. 1-chloro-1'-deoxysucrose, is affected by polydextrose. It is respectfully submitted that the skilled artisan could not in any clear and logical manner realize that polydextrose has a sweetness-enhancing effect on other sugar compounds. In fact, based on Wong et al., the opposite is true. By picking out one so specific and synthetic sugar as 1-chloro-1'-deoxysucrose, Wong et al. suggest that the synergistic effect is a specific property existing for

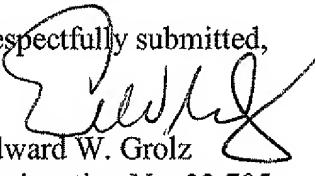
the combination of this compound with polydextrose and that it is surprising in its own context. Nowhere in Wong et al. is it taught or even suggested of any likelihood that the same effect would be true for other compounds and other combinations.

Wong et al. suggest on page 9, lines 38 to 51, that bulking agents such as sucrose, fructose, and glucose may be added into the chewing gum composition sweetened with 1-chloro-1'-deoxysucrose. However, Wong et al. do not teach or even suggest that the polydextrose has a synergistic effect on the sweetness of the sugar bulking agent nor would the skilled person based on Wong et al. have used polydextrose for increasing the sweetness of the sugar bulking agent.

The teaching of Wong et al. is clearly to use an intense sweetener to provide the sweetness that is needed. The present invention excludes the use of such an intense sweetener.

In view of the above, it is respectfully submitted that the method of the present invention is both novel and inventive in view of the cited references. Arguments regarding the remaining cited references are reiterated here by reference to applicants' previously filed response. The rejections of the claims based on said cited prior art are requested to be withdrawn.

It is respectfully submitted that all the claims in the application as presently submitted contain patentable subject matter and a Notice of Allowance is earnestly solicited. The undersigned respectfully requests the Examiner for a telephone conference should the above amendment and remarks not be considered to place the application into condition for allowance.

Respectfully submitted,

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